KUANTAN BEACH HOTEL SDN BHD

v.

KESATUAN KEBANGSAAN PEKERJA-PEKERJA HOTEL, BAR & RESTORAN SEMENANJUNG MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
RAUS SHARIF J
[ORIGINATING SUMMONS NO: R1-24-02-2003]
31 DECEMBER 2003

LABOUR LAW: *Trade dispute - Picketing - Application to strike out plaintiff's action for declaratory reliefs and to set aside injunction order restraining defendant from picketing near vicinity of plaintiff's hotel - Industrial Relations Act 1967, s. 40 - Trade Unions Act 1959, s. 21 - Whether principle in Supreme Court case of RCA Sdn Bhd v. Pekerja-pekerja RCA Sdn Bhd & Ors applicable*

CIVIL PROCEDURE: *Striking out - Application to strike out plaintiff's action for declaratory reliefs and to set aside injunction order restraining defendant from picketing near vicinity of plaintiff's hotel - Grounds for - Abuse of process of court - Rules of the High Court 1980, O. 18 r. 19(1)(b), (d)*

This was an application by the defendant pursuant to O. 18 r. 19(1)(b) and (d) of the Rules of the High Court 1980 to strike out the plaintiff's action for declaratory reliefs, and to set aside the injunction order made against the defendant restraining the defendant and its members from picketing at or near the vicinity of the plaintiff's hotel. The defendant submitted that the plaintiff's action was misconceived, scandalous, frivolous or vexatious and otherwise an abuse of the process of court on the following grounds: (i) s. 21 of the Trade Unions Act 1959 ('the TUA'), which provides immunity from civil suits in cases where an act is done in contemplation or in furtherance of a trade dispute, prohibited the plaintiff's action; (ii) the principle enunciated in the Supreme Court's decision of *RCA Sdn Bhd v. Pekerja-pekerja RCA Sdn Bhd & Ors* that since the Industrial Relations Act 1967 ('the IRA') created a right and gave a specific remedy to which the parties had already resorted to, the plaintiff was precluded from seeking relief from this court; and (iii) there were material misrepresentations and non-disclosure of facts in the plaintiff's affidavits.

Held:

[1] Picketing is sanctioned by s. 40 of the IRA as long as it is "in furtherance of a trade dispute". On the facts, there was clearly a trade dispute as the dispute in this case related to the terms of employment of the plaintiff's workmen, and the defendant's request that the plaintiff pay its members their contractual annual bonus was clearly in contemplation or in furtherance of a trade dispute. Thus, s. 21 of the TUA was applicable in the present action and there was an absence of jurisdiction for this court to entertain the plaintiff's action. For this reason alone, the plaintiff's action ought to be struck out for being scandalous, frivolous or vexatious and otherwise an abuse of the process of court. (pp 22 h & 23 b-c)

[2] The principle in *RCA (supra)* was directly applicable to the present case because the plaintiff had clearly resorted to the rights and remedy under the Act when it filed its application for the interpretation of the collective agreement even before it came to this court for a declaratory relief. Thus, the plaintiff's act of filing this action and obtaining an injunction was an abuse of the process of this court. (p 24 b-c)

[3] Although there was no material misrepresentation and non-disclosure by the plaintiff as alleged by the defendant, in light of s. 21 of TUA and the principle in *RCA (supra)*, the plaintiff's action ought to be struck out and the injunction to be discharged with costs and damages payable by the plaintiff to the defendant to be assessed by the deputy registrar. (p 24 f-g)

[Application allowed.]

Case(s) referred to:

RCA Sdn Bhd v. Pekerja-pekerja RCA Sdn Bhd & Ors [1991] 1 CLJ 19; [1991] 1 CLJ (Rep) 401 SC ***(foll)***

Legislation referred to:

Industrial Relations Act 1967, ss. 2, 16, 40, 44, 45, 56(1)
Rules of the High Court 1980, O. 18 r. 19(1)(b), (d)
Trade Unions Act 1959, s. 21

For the applicant/defendants - LG Seah (Angeline Low); M/s Lobo & Assocs
For the respondents/defendants - M Nagarajah (Janice Leo); M/s Shook Lin & Bok

Reported by Suresh Nathan

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JUDGMENT

Raus Sharif J:

Introduction

This is an application by the Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar
b & Restoran Semenanjung Malaysia (the defendant) to strike out the action of Kuantan Beach Hotel Sdn. Bhd. (conducting its business as Hyatt Regency Kuantan) (the plaintiff) and to set aside the injunction order made against the defendant restraining the defendant, its members/agents/servants from picketing at or near the vicinity of the plaintiff's hotel as indicated by the defendants

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Background Facts

The plaintiff and the defendant were at all material times bound by a collective agreement that was registered in the Industrial Court pursuant to the provisions of s. 16 of the Industrial Relation Act 1967 (the Act) and given cognizance No. 21/01 by the Industrial Court. The collective agreement was for the period
d 1 January 1999 to 31 December 2001 and thereafter.

On 18 December 2002, the defendant lodged a complaint of non-compliance at the Industrial Court pursuant to s. 56(1) of the Act. The matter was recorded as Industrial Court case No. 1/1 – 089/02 (non-compliance complaint). The
e non-compliance complaint was with respect to art. 27 of the collective agreement on the contractual annual increments of the defendants' members.

On 9 January 2003, the plaintiff offered to pay the defendant members their contractual annual bonus provided that they forego their contractual claim for annual increments which is the subject matter of the non-compliance complaint.

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By a letter dated 17 January 2003, the defendant rejected the plaintiff's offer and requested the plaintiff to pay the defendants' members their contractual annual bonus for the year 2000 by 30 January 2003, failing which it will have no alternative but to hold picketing actions on 31 January 2003.

g On 21 January 2003, the plaintiff filed for an application for interpretation of the collective agreement with the Industrial Court pursuant to s. 33(1) of the Act. In the interpretation application, the plaintiff sought the Industrial Court's interpretation of art. 2(1) and/or 2(3) of the collective agreement, in particular, whether on a proper interpretation of the said articles, the collective agreement
h is still in force.

By a letter dated 23 January 2003, the plaintiff *inter alia* alleged that the proposed picketing will be unlawful.

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On 24 January 2003, the plaintiff filed the originating summons (encl. 1) and the plaintiff's *ex parte* summons-in-chambers (encl. 3) primarily to restrain the defendant, its members agents/servants from picketing at or near the vicinity of the plaintiffs hotel as indicated by the defendant.

By a letter dated 28 January 2003, the defendant informed the plaintiff that the proposed picketing is lawful and will proceed to picket as scheduled if the plaintiff failed to pay the defendants' members their contractual annual bonus.

On 30 January, 2003 the plaintiff's *ex parte* application was heard and an interim order was granted by Abdul Hamid Said 'J' restraining the defendants, its members/agents/servants from, picketing at or near the vicinity of the plaintiff's hotel as indicated by the defendant.

In view of the said interim order, the proposed picketing did not materialise. Hence, on 10 February 2003, the defendant filed the defendant's summons-in-chambers (encl. 8) to strike out the plaintiff's originating summons, the plaintiff's *ex parte* summons-in-chambers and the said interim order.

Grounds Of The Application

The defendants' application is made pursuant to O. 18 r. 19(1)(b) and (d) of the Rules of the High Court 1980. It is submitted on behalf of the defendant that the plaintiff's action is misconceived, scandalous, frivolous or vexatious and otherwise an abuse of the process of the court on the following grounds:

(i) Section 21 of the Trade Unions Act 1959 (TUA) prohibits the plaintiff's action;

(ii) the principle enunciated in the then Supreme Court's decision of *RCA Sdn. Bhd. v. Pekerja-Pekerja RCA Sdn. Bhd. & Ors.* [1991] 1 CLJ 19; [1991] 1 CLJ (Rep) 401 (*RCA*'s case) precludes the plaintiff from seeking the relief from this court;

(iii) there are material misrepresentation and non-disclosure of facts in the plaintiff's affidavits.

Findings

(i) Section 21 of TUA

It is the submission of the defendant that s. 21 of TUA prohibits the plaintiff from bringing the present suit against the defendant. Section 21 of TUA provides as follows:

> No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any officer or member thereof in respect of any act done in contemplation or in furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or his labour as he wills.

However, learned counsel for the plaintiff submitted that s. 21 of the Act does not provide a trade union with complete immunity against all civil actions, but only in relation to specific claims:

(a) an action for inducement to break a contact of employment;

(b) an action for interference with the trade, business or employment of another; or

(c) an action for interference with right to dispose of capital or labour at will.

According to learned counsel, in the present case, the plaintiff was seeking a declaratory relief and pending the outcome, the plaintiff applied for a *quia timet* injunction in order to preserve the *status quo* and thus, the specific immunity that is provided by s. 21 is completely inapplicable. It is also submitted on behalf of the plaintiff, the form of industrial action, that is picketing intended to be carried out by the defendant is clearly prohibited by ss. 44 and 45 of 1967 Act. This is because the defendant is merely claiming for non-payment of annual bonus under the collective agreement and thus the defendant is statutorily barred from carrying out the picketing and/or strike or any form of industrial action.

With respect, I am unable to agree. The plaintiff's action stemmed from the defendant's letter dated 17 January 2003 (exh. OKE 4). In the said letter, the defendant requested that the plaintiff pay the defendants' members their contractual annual bonus which was already due. The defendants informed the plaintiff that if it failed to pay the contractual annual bonus by 30 January 2003, it will proceed to hold picketing actions to safeguard their interest.

Picketing is sanctioned by s. 40 of the 1967 Act as long as it is "in furtherance of a trade dispute". Trade dispute as defined in s. 2 of the 1967 Act reads as follows:

> any dispute between an employer and his workmen which is connected with the employment or non-employment or the terms of employment or the condition of work of any such workmen.

I am of the view the request by the defendant that the plaintiff pay the defendants' members their contractual annual bonus, which was already due failing which it will proceed to hold picketing actions, squarely falls within the meaning of a trade dispute as it relates to term of employment of the plaintiff's workmen represented by the defendants' trade union. There was clearly trade dispute as the dispute relates to the terms of employment of the plaintiff's workmen and the defendants act of issuing exh. OKE 4 was clearly in contemplation or in furtherance of a trade dispute. Thus, I am unable to agree with the plaintiff's contention that non-compliance of a collective agreement was not a trade dispute.

Thus, I am of the view that s. 21 TUA is applicable in the present action. There is an absence of jurisdiction for this court to entertain the plaintiff's action. For this reason alone the plaintiff's action ought to be struck out for being scandalous, frivolous or vexatious and otherwise an abuse of the process of the court.

The learned counsel for the plaintiff in the course of the argument raised a noble issue in that picketing is a form of industrial action that forms part and parcel of a strike. Section 45 of the Act states, *inter alia*, that a strike shall be deemed illegal if it is in contravention of s. 44 of the Act. Thus, it is the argument of the plaintiff that by virtue of s. 45 of the Act, the defendants' intention to picket would have been deemed illegal.

Again, I am unable to agree. To me strike and picketing are two different things. The right to picket is clearly preserved in s. 40 which sets out the circumstances where picketing is allowed. The use of the two different terms within the same statue indicates that Parliament intended them to relate to different matters. Consequently, I am of the view ss. 44 and 45 of the 1967 Act which relates to strike are not applicable to this case. The plaintiff's contention that 'picketing' and 'strike' are one and the same has no basis in law.

***RCA*'s Case Principle**

It is contended by the defendant that since the 1967 Act creates a right and gives specific remedy to which the parties have already resorted to, the plaintiff is precluded from seeking relief from this court. The defendant refers to *RCA Sdn. Bhd. v. Pekerja-Pekerja RCA Sdn Bhd. & Ors.* [1991] 1 MLJ 30 to support its proposition.

The plaintiff however, submitted that the *RCA*'s case is not applicable and has no bearing on the plaintiff's application. This is because as argued by learned counsel that the plaintiff's application was for an order for declaration, and in the interim, for an injunction pending the preservation of *status quo* until the disposal of the application for the declaratory orders. With respect, I am unable to agree. To me, the RCA's principle is directly applicable to the present case. This is because the plaintiff had clearly resorted to the rights and remedy under the Act when it filed its application for the interpretation of the collective agreement even before it came to this court for a declaratory relief. Thus, the act in filing this action and obtaining an injunction against the defendant has therefore, acted in a scandalous, frivolous or vexatious manner and abused the process of this court.

Material Misrepresentation And Non Disclosure of Facts

It is submitted by the defendant that the plaintiff had at paras. 8, 9, 16, 24(1) and (b) of the plaintiff's first affidavit (encl. 2) misrepresented to the court that the collective agreement has expired due to effusion of time and the plaintiff is therefore not bound to give the defendants' members their annual bonus. But, as a matter of fact, according to the defendant, at all material time the collective agreement is subsisting and remains in force and binding on the plaintiff and the defendant.

The plaintiff argues that the defendants had never admitted that the said collective agreement is still substituting and accordingly not guilty of material misrepresentation and non disclosure of facts.

I am in agreement with the plaintiff on this issue. On the facts there is no material misrepresentation and non disclosure as alleged by the defendants.

Nevertheless, in light of s. 21 of TUA and the *RCA*'s case principle, it is my findings that the plaintiff's action is misconceived, scandalous, frivolous or vexatious and otherwise an abuse of the process of the court. I, therefore allowed the defendant's application and accordingly strike out the plaintiff's action and discharge the injunction with cost and damages be payable by the plaintiff to the defendant to be assessed by the deputy registrar.